

Montana's Workers' Compensation System . . .

Declaration of Public Policy

Insurance - Who's Covered, Who's Not

***How is Montana's Workers' Compensation System
Administered?***

Montana Workers' Compensation Market

Governor's Workers' Compensation Advisory Council

Declaration of Public Policy¹

It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole, they are intended to assist the injured worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

A worker's removal from the work force due to a work-related injury or disease has a negative impact on the injured worker, the injured worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return an injured worker to work as soon as possible after the worker has suffered a work-related injury or disease.

Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

Title 39, chapters 71 and 72 (Workers' Compensation Act and the Occupational Disease Act), must be construed according to their terms and not liberally in favor of any party.

It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

¹ MCA 39-71-105

Insurance - Who's Covered, Who's Not

If you are an employer or an employee, the Workers' Compensation Act applies to you. An employer who has an employee in service under any appointment or contract of hire, expressed or implied, oral or written, must elect to be bound by the provisions of compensation Plan 1 (self-insured), Plan 2 (privately insured), or Plan 3 (State Fund).

Employment Exempted²

The Workers' Compensation Act and the Occupational Disease Act do not apply to any of the following employments:

- Household and domestic employment
- Casual employment
- Dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code
- Sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company
- Broker or salesperson performing under a license issued by the Board of Realty
- A direct seller
- Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States
- A person performing services in return for aid or sustenance only
- Volunteers
- Employment with a railroad engaged in interstate commerce
- An official, including a timer, referee, or judge, at a school amateur athletic event
- A person performing services as a newspaper carrier or freelance correspondent
- Cosmetologist's services and barber's services
- A person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the reservation
- A jockey who is performing under a license issued by the Board of Horse Racing
- An employer's spouse
- A petroleum land professional
- An officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company
- A person who is an officer or a manager of a ditch company
- Service performed by an ordained, commissioned, or licensed minister of a church
- Independent Contractors

² MCA 39-71-401

How is Montana's Workers' Compensation System Administered?

The Employment Relations Division provides a wide variety of services and regulation related to workers' compensation and safety.

Workers' Compensation Regulation Bureau

The **Contractor Registration Unit** ensures the business has workers' compensation insurance. The law provides protection from liability for workers' compensation claims for contractors who use the service of other construction contractors.

The **Uninsured Employers Fund Unit** ensures employers and employees are protected under the Workers' Compensation and Occupational Disease Acts. The Unit enforces coverage requirements for all employers, pays benefits to injured workers whose employers did not have workers' compensation coverage, and manages the fund from which benefits are paid.

The **Subsequent Injury Fund Unit** administers the funds that are used to offset claim costs associated with injuries to workers with disabilities. This reduces claim liability and provides an incentive for employers to hire certified workers.

The **Medical Regulations Unit** administers a program that provides an effective and equitable method of health care cost containment. Medical fee schedules are established by the unit and utilized by the insurers to reimburse medical providers.

The **Carrier Compliance Unit** monitors compliance of private workers compensation carriers. The unit also licenses professional employer organizations and processes extraterritorial agreements.

The **Independent Contractor Central Unit** issues decisions on employment relationships for the Department of Revenue, Labor Standards, Unemployment Insurance, and Workers' Compensation Compliance. The unit also issues Independent Contractor (IC) Exemptions.

Claims Assistance Bureau

The **Claims Unit** ensures compliance with the workers' compensation and occupational disease laws relating to benefits and claims. The unit also regulates attorney fees, administers the occupational disease panel process, and provides assistance to insurers, attorneys and injured workers.

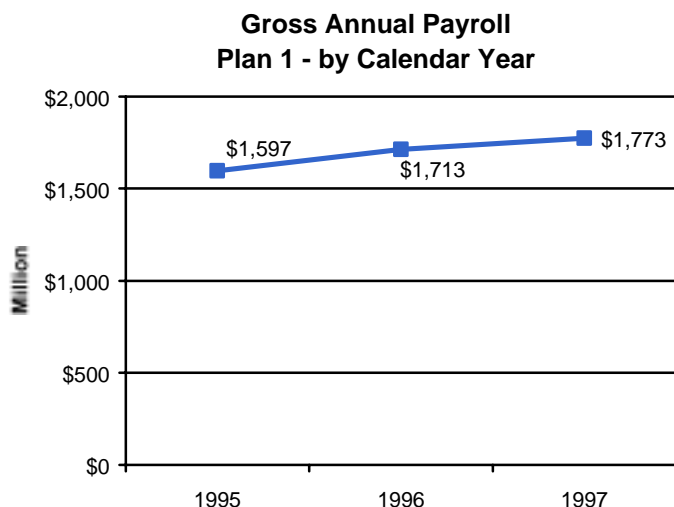
The **Data Management Unit** enters data on new claims, tracks policy coverage, maintains the workers' compensation database system and provides a comprehensive annual report on workers' compensation to the governor and the legislature.

The **Mediation Unit** provides an alternative method of resolving workers' compensation benefit disputes before the dispute goes to the Workers' Compensation Court. This is a mandatory non-binding process.

Safety Bureau

The Safety Bureau conducts inspections of public employers, performs on-site consultations for private employers and inspects coal mines and sand and gravel operations throughout the state. The Bureau provides safety and occupational health training for both public and private employers.

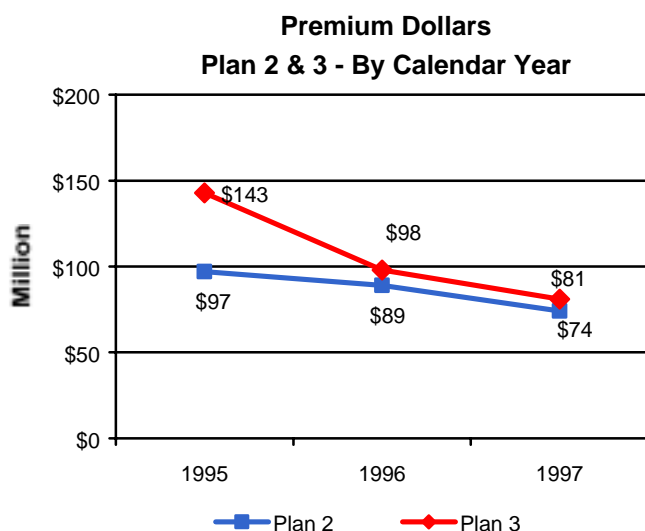
Montana Workers' Compensation Market



Plan 1 employers pay no premium.

Montana employers have several options for obtaining workers' compensation coverage for their employees. Employers with sufficient cash reserves may qualify as individual self-insured (Plan 1) by applying to the Employment Relations Division, or employers may choose to join with other employers in their industry to form a self-insured group. Currently, Montana has 51 individual self-insurers and 8 self-insured groups (4 public and 4 private).

All other employers may opt for coverage with private insurance companies (Plan 2) in the "voluntary market". Montana has 318 private insurance companies licensed to write workers' compensation insurance.



Employers may obtain coverage through the State Compensation Mutual Insurance Fund (State Fund). The State Fund (Plan 3) is the insurer of last resort, and represents approximately 35% of the current workers' compensation market. The change in Montana's market share is reflected in the following table.

**Distribution of Market Share
By Plan & Fiscal Year**

Calendar Year	1995	1996	1997
Plan 1 - Payroll	\$1,597,336,997	\$1,713,291,665	\$1,773,148,488
Plan 2 - Premium	\$97,572,966	\$89,893,661	\$74,615,961
Plan 3 - Premium	\$143,275,000	\$98,270,000	\$81,057,000

Governor's Workers' Compensation Advisory Council

On July 24, 1997, Governor Mark Racicot appointed nineteen individuals to the Workers' Compensation Regulation Advisory Council. Representing a broad cross-section of system participants, the council members were charged with reviewing the workers' compensation regulation system and recommending what the mission and goals of that system should be.

Beginning in October of 1997 the Council reviewed the current functions of Montana's regulatory system, heard presentations from other states thought to have effective regulatory systems and discussed ideas for system improvement. The Council concluded its work and met with Governor Racicot on October 16, 1998 to present the Council's final report. The report contained 26 recommendations for changes to the workers' compensation regulatory system for the Governor's consideration. The Governor expressed his appreciation for the Council's work and took their recommendations under advisement for potential development during the 1999 legislative session or for possible action by the Department and future legislative sessions.

The recommendations generated by the Council are:

- ! The statutory requirement for insurers to submit quarterly expenditure reports should be repealed.
- ! Change the due date of the annual report of total compensation and total medical benefits paid from March 31 to January 31. Also, insurers should be required to submit a quarterly breakdown of benefit payments be included on the annual report.
- ! The Subsequent Injury Fund should pay up to \$2,500 to an employer for work-site modifications that allow a certified worker to return to the time-of- injury or a new position.
- ! The Subsequent Injury Fund should reimburse insurers for all benefit paid to certified workers after the first 26 weeks of wage and medical payments including rehabilitation benefits.
- ! The department should refer Subsequent Injury Fund certified workers to DPHHS for assistance.
- ! The department should continue to make educational efforts related to the workers= compensation process available to all parties in the system (employers, injured workers, insurers, providers) on a request basis. Educational forums conducted by the department may be accomplished by conducting seminars to interested participants.
- ! The department should obtain a toll free number for injured workers to use to obtain information about the workers= compensation system. In all cases, the department should first ensure that the caller has been in contact with the insurer or manager of the claim. The department should provide general information about the workers=

compensation process and should refer questions related to coverage or specific benefit questions to the appropriate insurer. The department should advise injured workers about the dispute resolution process.

- ! The department should provide an Employer Advisor and an Employee Advisor to be the contact for their respective groups, and to be a neutral but well-informed party to answer questions and give advice on a timely basis on how workers= compensation issues could be resolved.
- ! The Montana Workers= Compensation Adjuster Association should develop a certification and training program for workers= compensation adjusters and bring this recommendation to the 1999 legislature.
- ! Insurers should be required to administer all workers= compensation claims in-state and include a penalty for failure to do so, up to and including termination of insurance privileges (including self-insurance privilege) for repeated failures.
- ! The Employee Posting Notice should be revised to emphasize where to report claims and the availability of a toll free number to contact the department to obtain independent neutral information about the worker=s compensation system. The department should publicize that it is available to assist employees and employers with their workers= compensation questions.
- ! Employers, other than plan No. 1 individual self-insured employers, who pay medical bills and or wage loss benefits directly in the event of an employee injury, should be subject to a fine of up to \$200.
- ! Professional Employer Organizations should not be allowed to operate while they are appealing a denial of their application for licensure.
- ! Workers= compensation insurers of Professional Employer Organizations should be required to issue separate policy numbers for every client company.
- ! The fee charged for licensing Professional Employer Organization applications should be commensurate with the actual cost of processing.
- ! A statutory amendment should be made to the PEO laws to require the PEO to provide a disclosure notice to client companies.
- ! The department should either employ additional field investigators or use private auditors to improve employer compliance with workers= compensation coverage requirements.
- ! The HJR10 committee is recommending that occupational disease orders be mediated rather than go to Contested Case Hearings. If this recommendation is adopted, then the department=s role in 39-72-602, MCA, should be modified to include only the scheduling of medical examinations, the distribution of the medical reports and preparing a

recommendation.

- ! The Safety Bureau should review its current utilization of staff to ensure they are being utilized appropriately. If staff can not be reassigned, an additional compliance position should be added to enhance safety enforcement efforts.
- ! The Safety Bureau should identify repeat offenders and make examples of them by calling them to a hearing and reporting them in the press.
- ! The Department should adopt the OSHA penalty schedule for safety violations with the money collected in fines going to the general fund or to offset the assessment funding for the Safety Bureau.
- ! At a minimum, one additional full-time training officer should be added to the Safety Bureau.
- ! The wording in 50-73-410, MCA, (Safety in Coal Mines) should be changed to read: Awhen advised by any person of any accident in a coal mine involving loss of life or serious personal injury...
- ! The Safety Bureau should adopt requirements for compliance with the Safety Culture Act, and cite violations during routine mandatory inspections of public sector entities.
- ! The department's database system should be enhanced by providing research staff to analyze the data currently being collected. Also, expand the data being collected to include medical information.
- ! Section 39-71-201, MCA should be amended to remove the 2.6% assessment cap. The legislature should determine the appropriate funding level through the appropriations process.

The governor thanked the council member for the balanced recommendations they put forth. Then demonstrated a commitment to maintaining healthy workers as well as a healthy workers' compensation system.

